United States Court of Appeals

for the Second Circuit

APPENDIX

Docket No. 75-2076

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IN THE

United States Court of Appeals

For the Second Circuit

UNITED STATES OF AMERICA, ex. rel.
JOHN J. PELLA,

Petitioner-Appellant.

—against—

THEODORE REID, SUPERINTENDENT OF ALBION CORRECTIONAL FACILITY,

Appellee.

On Appeal from the United States District Court
Northern District of New York

APPELLANT'S APPENDIX

ALI & GERBER
Attorneys for Petitioner-Appellant
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PAGINATION AS IN ORIGINAL COPY

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DOCKET ENTRIES.

CIVIL DOCKET

UNITED STATES DISTRICT COURT

Jury demand date:

74-CV-126

D. C. Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
UNITED STATES OF AMERICA, ex rel. JOHN J. PELLA, Petitioner, -against- THEODORE REID, Superintendent of Albion Correctional Facility, Respondent	For plaintiff: John J. Pella, Albion Correctional Facilit, Albion, New York Ali & Gerber, Esqs., 920 University Building, Syracuse, New York 13202 For defendant: Louis J. Lefkowitz, Atty General, State of NY, Capitol, Albany, NY

STATISTICAL RECORD	COSTS		DATE 1974	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed	Clerk		Oct. 7	Ali & Gerber, Esqs.	5 00	
			Oct. 7	Disbursed		5 00
J.S. 6 mailed	Marshal		Apr25	Ali & Gerber, Esqs.	5 00	
			Apr25	Disbursed		5 00
Basis of Action: Petition for Writ of Habeas Corpus	Docket fee					
	Witness fees					
Action arose at:	Depositions					

Docket Entries.

74-CV- 426

DATE	PROCEEDINGS	Date Order or Judgment Noted
1974		
ct. 7	(1) Filed Petition for Writ of Habeas Corpus	
" 7	(2) Filed Memorandum of Law	
)ct. 7	Papers forwarded to Hon. James T. Foley pursuant to order of rotation and assignment	
975		
Jan. 29	(3) Filed Order to Show Cause, returnable February 18, 1975 at Albany, signed by Judge Foley (1/28/75)	
Jan. 29	(4) Filed copy of Decision (memo) of Judge John J. Walsh, Oneida County Judg	
Jan. 29	(5) Filed Memorandum-Decision and Order of Judge Foley dated Jan. 28, 1975	
Feb. 13	(6) " Memorandum of Law	
" 18	(7) " answer (return)	
" 18	Return of Order to Show Cause. Decision reserved. Two weeks for petitioner to reply	
ril 14	(8) Filed copy of motion for Pre-Trial hearing in State Court	
" 14	(9) " supplemental memorandum of law	
" 14	(10) " Memorandum-Decision and Order (4/11/75) denying and dismissing Petit	
" 14	(11) " Judgment	
" 25	(12) " Notice of Appeal	
May 13	(13) Filed Application for certificate of probable cause	
" 13	(14) Filed copy of Certificate of probable cause	
" 13	(15) Filed Memorandum-Decision and Order of Judge Foley (5/12/75) directing the Clerk to file the certificate of probable cause	
May 21	(16) Filed copy of Civil Appeal Scheduling Order	
June 2	Sent Certified copy of Record on Appeal to CCA, 2nd Cir.	
" 4	(17) Filed receipt of CCA for original papers forwarded	

PETITION FOR WRIT OF HABEAS CORPUS.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, ex rel. JOHN J. PELLA, Petitioner	:	PETITION FOR WRIT OF HABEAS CORPUS
against	:	
THEODORE REID, SUPERINTENDENT OF ALBION CORRECTIONAL FACILITY, Respondent	:	

STATE OF NEW YORK)
) SS:
COUNTY OF ORLEANS)

JOHN J. PELLA, first being duly sworn, deposes and says:

1. I am the above named Petitioner and, pursuant to 28 USC 2241 (c) (3) and 2254, make this application for a Writ of Habeas Corpus.

2. Petitioner is imprisoned by Respondent at Albion Correctional Facility, Albion, New York.

3. The cause of Petitioner's detention is:

On December 31, 1969 following trial and conviction of first degree robbery and second degree burglary. Petitioner was sentenced to concurrent twenty-five and fifteen year terms by the Oneida County Court (Walsh, J.). A copy of the judgment of that Court appears as Exhibit "A".

4. The complained of conviction violates the fourteenth amendment to the United States Constitution in that Petitioner was arrested without probable cause; thereafter Petitioner was subjected to identification procedures which were grossly suggestive and which

in fact, led to the irreprable misidentification of Petitioner; at his trial Petitioner was denied his right to cross-examine the victim of the alleged crime.

5. Petitioner was stopped in Syracuse, New York and placed under arrest by the New York State Trooper Dillon on April 19, 1968 (Pg. 1501) but was not informed of the reason for his detention (Pgs. 1518, 1531-33), until after a "line-up" was conducted (Pg. 438).

6. The information available to the arresting officer was merely a description of the vehicle in which Petitioner was a passenger, the fact that the vehicle contained two occupants, and that the car was possibly involved in a crime committed in Rome, New York. The arresting officer had no knowledge of the details of any crime, had no information that the occupants were involved in any crime, and had absolutely no description of the occupants. (Pgs. 1464-1538).

7. Testimony was later provided by two prosecution witnesses, Alfred Schiano (Pg. 1551) and Patrick Nesci (Pgs. 1480-1481), which proved that the vehicle in which Petitioner was a passenger was 40 miles distant from the scene of the crime at the time of the alleged robbery; further, the record is devoid of any evidence which connects said motor vehicle to the crime charged.

8. The charges against the other three men arrested at the same time and under the same circumstances as Petitioner were dismissed.

9. Following his arrest, Petitioner was delivered to the Rome Police Station where, without the assistance of counsel, various identification procedures were employed, including the use of photo

identification prior to a line-up (even while Petitioner was in custody (Pg. 1175)), assembly of the identification witnesses together where they were permitted to discuss the case among themselves (Pg. 1175), placement of Petitioner together with other suspects in a "line-up" which was composed of men whose physical characteristics were strikingly different from Petitioners', exhibition of Petitioner's photograph to an identification witness after his refusal at the line-up to identify Petitioner (Pg. 511).

10. Prior to the trial, Petitioner's motion for a hearing to determine the constitutional fairness of the pre-trial confrontation was denied. Order of Judge Walsh signed September 23, 1969, filed in Oneida County Clerk's Office, October 2, 1969.

11. At the trial Petitioner again moved for a hearing to determine whether constitutional due process requirements were violated by the pre-trial confrontations, (Pgs. 420-421). This motion was summarily denied (Pg. 448).

12. At the trial, the victim, Mrs. Cingranelli, was cross-examined by counsel for two co-defendants. The court was adjourned before Petitioner's attorney was able to cross-examine this witness. Although the court and the District Attorney were advised that Petitioner's attorney desired the opportunity to examine Mrs. Cingranelli; the prosecution completed its case and rested without producing said witness for cross-examination, (Pgs. 250-251).

13. The court denied a motion by Petitioner's counsel to strike the testimony of Mrs. Cingranelli which was made because of his lack of opportunity for cross-examination (Pgs. 1976-1978).

14. After the defense had opened its case, the District

Attorney requested permission to re-open the People's case for the sole purpose of presenting Mrs. Cingranelli, nearly a month after her direct examination, for cross-examination. The motion was opposed by the defense, (Pgs. 2001, 2002-2012) and was denied by the court (Pg. 2013).

Because of the foregoing facts, Petitioner is being restrained of his liberty by the Respondent in violation of the Constitution of the United States and he therefore, prays that the Writ be granted and an order be entered discharging him from custody.

John J. Vella

John J. Vella

Sworn to before me this

17 day of September, 1974.

Notary Public

NOTARY PUBLIC

My Commission Expires 75

Order of Justice Walsh attached to Petition.

At a Trial Term of County Court, held in and for the County of Oneida, at the Court House in the City of Utica, New York, on the 30th day of September 1969.

Present:

Hon. John J. Walsh,
Oneida County Judge.

STATE OF NEW YORK
COUNTY COURT — COUNTY OF ONEIDA

The People of the State of New York,

vs.

Index # 68 2058
Indictment No. 68-90

Ralph J. Centolella, Peter Rinaldi & John J. Pella,
Defendants

The above named defendant, John J. Pella, having moved this Court for an Order for a separate trial,

and said motion having duly come on to be heard on the 16th day of September, 1969 and after hearing Kenneth P. Ray, Esq. Counsel for said defendant, in support of said motion, and Arthur A. Darrigrand, District Attorney of Oneida County, in opposition thereto, and after having read the opposing affidavit, and due deliberation having been had thereon, and the Court having made its memorandum decision in writing, dated September 23rd, 1969, it is hereby

ORDERED that said motion by defendant be, and the same hereby is, denied. without prejudice to a renewal on the trial should circumstances warrant it.

Enter

John J. Walsh
Oneida County Judge.

ORDER TO SHOW CAUSE.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, ex rel.
JOHN J. PELLA,

Petitioner,

-against-

THEODORE REID, Superintendent of
Albion Correctional Facility,

Respondent.

ORDER TO
SHOW CAUSE

74-CV-426

Upon the petition of John J. Pella, verified the 19th day of September, 1974, and filed with this Court on the 7th day of October, 1974, it is

ORDERED: That Theodore Reid, Superintendent of Albion Correctional Facility, Albion, New York; Hon. Louis J. efkowitz, Attorney General, State of New York; and Hon. Richard D. Enders, District Attorney of Oneida County, New York, show cause at a Session of this Court appointed to be held at the United States District Courtroom, in the Federal Post Office Building, Albany, New York, on the 18th day of February, 1975, at 10 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, why a writ of habeas corpus should not be granted in the above entitled matter as prayed for in said petition, and for such other, further and/or different relief as may be just and proper.

Copies of the petition for habeas corpus and the supporting brief shall be mailed by the Clerk to the office of the Attorney General and the office of the District Attorney.

IT IS FURTHER ORDERED: That service of a copy of this Order upon the said Theodore Reid, Superintendent; Louis J. Lefkowitz, Attorney General, Attention of Joseph R. Castellani, Assistant Attorney General; and Richard D. Enders, District Attorney, by this office by depositing the same in a securely sealed postpaid wrapper, addressed to the said respondents by United States mail, on or before February 3, 1975, shall be due and sufficient service.

Dated: Albany, New York
January 28, 1975

UNITED STATES DISTRICT JUDGE

MEMORANDUM-DECISION AND ORDER,
dated 1-28-75.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, ex rel.
JOHN J. PELLA,

Petitioner,

-against-

74-CV-426

THEODORE REID, Superintendent of
Albion Correctional Facility,

Respondent.

JAMES T. FOLEY, D. J.

MEMORANDUM-DECISION and ORDER

Through his attorneys, Ali & Gerber, 920 University Building, Syracuse, New York 13202, there was filed for petitioner in the Clerk's office at Utica, New York, a petition for a writ of habeas corpus. The petition was filed October 7, 1974, referred to me in accord with our system of rotation between the two judges, and by me referred to Magistrate Bender Solomon, as authorized by Court Order for screening and report. Such report has been submitted. The Magistrate has obtained and furnished to me the trial record from petitioner's attorneys, and the briefs on appeal filed in the Appellate Division, Fourth Department. Permission to appeal was denied by the New York Court of Appeals. Petitioner was convicted after trial of first degree Robbery and second degree Burglary in Oneida County Court and sentenced to substantial prison terms on December 31, 1969.

The issues presented for federal review as alleged in the petition are that petitioner was arrested without probable cause, was subjected to identification procedures that were grossly suggestive, and denied the right to cross-examine the victim of the alleged crime. After the report by the Magistrate, my own office undertook efforts to obtain a memo-decision of County Judge John J. Walsh, dated September 23, 1969, and this decision difficult to locate has been furnished finally by Assistant District Attorney Daniel C. Wilson of Oneida County with his letter of January 13, 1975.

In my judgment, there is enough substance raised at least by the arrest and identification allegations to warrant the issuance of an Order to Show Cause directed to Theodore Reid, Superintendent of Albion Correctional Facility; Louis J. Lefkowitz, Attorney General; and Richard D. Enders, District Attorney of Oneida County, to show cause why a writ of habeas corpus should not be granted. The return day of the Order to Show Cause which shall issue separately is set for Tuesday, February 18, 1975, in the Main Court Room of this District Court (Court Room No. 1), Albany, New York, at 10:00 a.m.

The Clerk of the Court is hereby directed to make copies of the Petition for Writ of Habeas Corpus and supporting brief and forward them to the Attorney General, Attention of Assistant Attorney General Joseph R. Castellani; and to District Attorney Richard D. Enders, Oneida County Court House, Utica, New York 13501.

It is so Ordered.

Dated: January 28, 1975
Albany, New York

James T. Foley
UNITED STATES DISTRICT JUDGE

ANSWERING AFFIDAVIT OF ONEIDA COUNTY DISTRICT ATTORNEY.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, ex rel.

JOHN J. PELLA,
Petitioner

against

THEODORE REID, SUPERINTENDENT OF ALBION CORRECTIONAL FACILITY,
Respondent

ANSWERING AFFIDAVIT

74-CV-426

STATE OF NEW YORK)
: SS:
COUNTY OF ONEIDA)

DANIEL C. WILSON, being duly sworn, deposes and says that:

1. He is a duly appointed and acting Assistant District Attorney of Oneida County and is familiar with the above-entitled matter.

2. This affidavit is made upon information and belief, the sources of the information and grounds for the belief being the trial transcript and conversations with the Hon. Arthur A. Darrigrand, Oneida County Court Judge and former District Attorney of Oneida County.

3. That the issues raised by the petitioner were thoroughly litigated at a trial of this matter.

4. The defendant is being legally detained pursuant to a valid conviction for robbery in the first degree and burglary in the second degree for which the defendant received concurrent sentences of twenty-five and fifteen years respectively on December 31, 1969.

5. The defendant was validly placed under arrest by Trp. Emerson J. Dillon of the New York State Police, now deceased, on April 19, 1968 within three hours of the robbery at the Cingranelli home. The testimony at the trial established that Trp. Dillon had been advised by Inv. Bruce Risley that a vehicle would be approaching Syracuse from Rome and that it was possibly involved in the robbery. Sufficient probable cause existed for arrest in view of the fact that Inv. Risley:

a. observed the vehicle entering the Thruway from the direction of Rome, N.Y. within 2 hours of the robbery;

b. one of the occupants of the vehicle Inv. Risley noticed to be Alfred Schiano, who was a brother to the owner of the vehicle used in the robbery and then within the possession of the police.

c. Further, the police then had information that two people were wanted in connection with the robbery and Inv. Risley first thought he saw two people in the car, and even with three occupants it would provide probable cause in view of the fact that a third man would be necessary to drive the other two home, since their vehicle was seized.

d. Besides the fact that both cars belonged to a Schiano family member, both Schianos were from Syracuse, the defendant Rinaldi was from Syracuse, the two cars were both from Syracuse, and the car was exiting at the East Syracuse exit of the Thruway.

6. All of these factors vicariously provided Trp. Dillon with probable cause to arrest the petitioner at least for facilitation of the robbery, if not for the robbery itself.

7. The lineup procedure was conducted in accordance with the standards of fairness and due process. Extensive examination and cross-examination was conducted during the trial and hearings in the case herein as to the nature and conduct of the lineup. No where in the record does it indicate that a photograph of the defendant was viewed prior to the lineup, or a photograph of any co-defendant for that matter. The defendant Pella was from Pittsburg, Pa., and had no photograph on file with the Rome Police Dept. None of the other defendants were from Rome, N.Y. either. The witnesses were allowed to talk together prior to the lineup, but nothing in the record indicates that this could have created misidentification, since they had no photographs to center their discussion on. The record indicates that the witnesses viewed the lineup individually and did not discuss what they saw with one another (p. 1177). The photograph of the lineup speaks for itself as to the fairness of the lineup. On the issue of the mug shot viewed by the witness Alder, a suppression hearing conducted for the co-defendant Rinaldi established at p. 169 that Alder asked for the additional side-view photograph of Pella only to assure himself that this was the man, since he had viewed Pella from the side at the time of the crime.

8. During the trial Pella's attorney moved for a hearing on the lineup upon the basis that he was not represented by counsel at the time

of the lineup (p. 421). A hearing was thereupon conducted and 4 witnesses testified (pp. 426-450), whereupon the Court decided that the defendant Pella was represented by counsel at the lineup and that a further hearing under the Wade, Gilbert and Stovall cases was nd necessary. Moreover, as the Court noted, a two day hearing had already been conducted as to the suggestiveness of the lineup (p. 447) and theCourt incorporated the findings of that hearing on Rinaldi within its ruling on Pella.

9. The record clearly indicates that Mrs. Cingranelli was subjected to extensive cross-examination by Mr. Brindisi for the defendant Centolella and by Mr. Gerber for the defendant Rinaldi. During the course of Mr. Gerber's cross-examination he requested an adjournment and it was brought out on the record that Mrs. Cingranelli would be available for recall upon request (p. 250). Such request was never made until after the People rested, whereupon the defendant Pella's attorney made a motion to dismiss on that basis. The District Attorney then agreed to make Mrs. Cingranelli available, but the defendant's attorney refused such offer.

WHEREFORE, it is respectfully submitted that the defendant is being validly detained in custody.

Daniel C. Wilson
Assistant District Attorney
Oneida County Court House
Utica, New York 13501

Subscribed and sworn to before me
this day of February, 1975.

SUSAN A. STONE
Notary Public, Oneida County, New York.
My commission expires March 30, 1975.

RETURN OF RESPONDENT, Theodore Reid.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, ex rel.

JOHN J. PELLA,

Petitioner, RETURN

-against- 74-CV-426

THEODORE REID, SUPERINTENDENT OF
ALBION CORRECTIONAL FACILITY,

Respondent.

Respondent's return is submitted on behalf of Theodore Reid, Superintendent of Albion Correctional Facility, in whose custody petitioner, John J. Pella, is presently held. Petitioner was convicted after trial by jury for the crimes of robbery in the first degree and burglary in the second degree following which he was sentenced to concurrent terms of 25 and 15 years.

Petitioner's contention that he was arrested without probable cause cannot be sustained. Trooper Dillon (now deceased) received a radio call in the vicinity of Exit 35 on the New York State Thruway that a robbery was committed in the City of Rome that day and that the occupants of a car (which was described to him) was seen entering the westbound traffic lane at the Verona Exit, said occupants who may have been involved in the crime. The dispatcher of this radio call, Trooper Risely, noted that the car was the same one as being involved in other burglaries and robberies in the Rome area, recognized one of the occupants from previous burglaries and the car as having the same license plate number. With this information Trooper Dillon had sufficient time to determine that the owner of the car described by Trooper Risely and his brother had been connected with prior crimes as well as some of the co-defendants and when he recognized some of the occupants of the car, he certainly had reasonable cause for believing that petitioner may have also been involved, or

accessory in the robbery in Rome. Certainly petitioner's presence in the car, in itself, could infer probable cause for his arrest.

Beck v. Ohio, 191 N E 2d 825, went so far as to hold that the lawfulness of an arrest without a warrant is present if the facts in the possession of the arresting officer are sufficient to believe that a felony has been committed and that the accused committed it, probable cause is present. A distinction should also be made as to the source of the information. Here, Trooper Dillon received the information not through an informer, but from a fellow police officer, certainly a more reliable source. (See, record, pages 1518-1519.) Trooper Dillon had no other choice but to make the arrest based upon the information he received even if the defendant did not commit the crime. Trooper Dillon acted as any prudent, reasonable law enforcement officer would under the circumstances by making the arrest. He was also informed that the occupants were believed to be armed. They were armed at the scene of the crime and later disposed of their weapons.

Trooper Dillon certainly had sufficient information to stop the car and inquire about its passengers. (Terry v. Ohio, 392 U. S. 1 [1968].) After stopping the vehicle and making proper identification he had reason to believe that they were involved in the crime reported to him by Trooper Risely and were attempting an escape.

Ironically, Trooper Dillon was killed on the New York State Thruway under circumstances similar to this case after stopping a vehicle and being shot by one of the occupants.

As far as the identification procedure is concerned, respondent makes reference to the affidavit of the District Attorney and calls the attention of this Court to the 260 pages of testimony of the Wade-Gilbert-Stoval Hearing conducted during the course of the trial. This record has been made available to this Court by petitioner.

As to petitioner's contention of his denial of his right to cross-examine the victim during the trial, it would appear from the record that no request was made by defendants after the close of the People's case to return the victim, Mrs. Cingranelli, for cross-examination. Ample opportunity was given to defendants to cross-examine during the trial. Here there was no outright denial to cross-examination, but rather a failure of defendant to request that right. In fact, this was not a denial, but a waiver. Likewise, petitioner's attorney represented one or two other co-defendants at the trial and cross-examined Mrs. Cingranelli.

This petitioner was convicted by a jury of his peers after a long and lengthy trial, during which he had ample opportunity to prove his innocence or, at least, his freedom from guilt beyond a reasonable doubt. This he failed to do. Based upon the evidence produced by the People during the course of the trial, there is not even a suspicion of petitioner's innocence. Nor can it be shown that petitioner is being restrained of his liberty in violation of his constitutional rights.

Petitioner's memorandum of law consists mainly of conjecture, surmise, assumptions, theory, suspicion and contains conclusory and suggestive language, without factual basis.

Troopers Risely and Dillon were trained and seasoned in methods involving crime and apprehension of those suspected of committing a crime. In the apprehension and arrest of suspected criminals or persons suspected of committing crimes, police officers almost always act on information given to them, sometimes emergency in nature and, as in this case, where an escape was in progress, their criteria for making an arrest is determined by the application of a common sense rather than a technical textbook standard. Probable cause defines itself. Trooper Dillon, was a prudent man and as an experienced law enforcement officer was provided with reasonable information and grounds for believing that a crime had been committed in Rome, New York, a few hours

earlier and that the occupants of the car he stopped were probably involved, certainly a cause for detention and arrest. This is common practice among law enforcement police officers. Additionally, Trooper Dillon in the exercise of his duties as a law enforcement officer, prudently arrested all the occupants of the car. An officer making an arrest based upon probable cause would, under the circumstances of this case, not be required to make positive identification. Each occupant of the car was suspected of the crime.

It is respectfully requested that this petition be denied and dismissed and that petitioner be ordered to remain in the custody of respondent.

LOUIS J. LEFKOWITZ
Attorney General

By s/Joseph R. Castellani

JOSEPH R. CASTELLANI
Assistant Attorney General

Return of Respondent, Theodore Reid.

Theodore C. Reid, Superintendent of Albion Correctional Facility being duly sworn, deposes and says that he is over twenty-one years of age and resides on the Institutional grounds in Albion, New York.

John J. Pella was indicted for the crimes of Robbery 1°, Burglary 2° and Possession of Burglar's Tools. He was convicted of the crimes Robbery 1° and Burglary 2° having been found guilty by verdict. He was sentenced to an Indeterminate sentence of imprisonment with a maximum of 25-0-0 years for Robbery 1° and 15-0-0 years on the charge of Burglary 2° (concurrent). These sentences were imposed on December 31, 1969 by John J. Walsh, Oneida County Judge. He was given credit for 421 days jail time and received at the Attica Correctional Facility on January 6, 1970.

Mr. Pella was transferred from Attica Correctional Facility to Clinton Correctional Facility on September 21, 1971, from Clinton Correctional Facility to Auburn Correctional Facility on December 17, 1971, and from Auburn Correctional Facility to Albion Correctional Facility on September 11, 1974 where he is currently confined.

Mr. Pella is scheduled to meet the December 1975 Board of Parole.

Theodore C. Reid

Theodore C. Reid, Superintendent

February 3, 1975

Sworn be me on this date

David J. Brown

Notary Public

NOTARY PUBLIC, STATE OF N.Y.

My Commission Expires March 30, 1975

DECISION AND ORDER OF DISTRICT COURT.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, ex rel.
JOHN J. PELLA,

Petitioner,

-against-

74-CV-426

THEODORE REID, Superintendent of
Albion Correctional Facility,

Respondent.

APPEARANCES:

OF COUNSEL:

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EDWARD F. GERBER

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Attorney for Respondent
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JOSEPH R. CASTELLANI
JULES SACK
Assistant Attorneys General

RICHARD D. ENDERS
District Attorney, Oneida County
Oneida County Court House
Utica, New York 13501

DANIEL C. WILSON
Assistant District Attorney

JAMES T. FOLEY, D. J.

MEMORANDUM-DECISION and ORDER

Petitioner, through his attorneys, Ali & Gerber, filed an application for a writ of habeas corpus with payment of the statutory fee on October 7, 1974, challenging three aspects of his conviction by a jury in Oneida County Court on counts of first degree robbery and second degree burglary. Oneida County Judge John J. Walsh sentenced petitioner to concurrent twenty-five and fifteen year terms respectively. Petitioner is presently confined in the New York State Correctional Facility in Albion, New York. The judgment of conviction was affirmed by the Appellate Division, Fourth Department, without opinion [39 A.D. 2d 840 (1972)]. Leave to appeal to the New York Court of Appeals was denied by Judge Jasen in July 1972.

After study of the issues raised in the petition and memorandum of law, I issued an Order to Show Cause on January 28, 1975, why the writ should not issue because of the substance presented, in my judgment, by the challenges to the petitioner's arrest and subsequent identification procedures employed while he was in custody contended as being violative of constitutional rights.

Oral argument was had on February 18, 1975, and further briefing was ordered and received from all parties. In addition to the questions of the arrest and the identification, another claim is made involving the availability of the victim during the trial for cross-examination by trial counsel for petitioner. This issue will be discussed separately at the conclusion of this decision.

Analysis of the two primary claims suggest a three-pronged question: First, was the arrest without probable cause and thus violative of the protections of the Fourth Amendment to the United States Constitution; second, if so, was the identification procedures thereafter, consisting of the line-up and photographic display, fruit of the so-called poisonous tree, i.e., a product of the illegal arrest; and lastly, did the so-called poison or illegality become insinuated into the trial causing actual prejudice and thereby deprive petitioner of a trial that lacked fundamental fairness under the Constitution?

The inquiry must begin with the realization that probable cause necessary for an arrest is that amount of facts available in the mind which would warrant a man of reasonable caution to believe that an offense has been committed. Beck v. Ohio, 379 U.S. 89, 91 (1964); United States v. Tramontana, 460 F.2d 464, 466-67 (2d Cir. 1972). In this situation, the focus is upon information known to New York State Troopers Risley and Dillon who were mainly involved from the record testimony in the apprehension and arrest of the petitioner. A review of the record, consisting of almost 2500 pages, was necessary in answering these questions. Trooper

Risley's testimony (R. 1464-1477) may be fairly summarized as indicating that he recognized the license plate number on a Cadillac automobile when he first observed it entering and heading west on the New York State Thruway. He did not recognize any of the occupants and gave no reason or explanation for the recognition of the plate number or the ramifications of this number to law enforcement or its relation to the crimes in question. Thus, the legal inference which may be drawn from the license plate number is unclear, but unquestionably this license plate per se does not tie petitioner to the robbery-burglary which occurred in nearby Rome, New York, earlier on that day. It is noteworthy in this regard that there is no evidence whatever that the license plate or the car was involved in the particular crimes occurring in Rome shortly before the observation of Risley, or that the automobile was sought in connection with any other crimes. Trooper Risley testified that this sighting of the Cadillac and its license plate number were telephoned by him to his headquarters (R. 1497-1506; 1509-1522); apparently, he did not undertake any pursuit of the vehicle himself. Subsequent police action, as far as the record reveals, consisted of a message conveyed by police radio to Trooper Dillon, who was on the New York State Thruway in a position to intercept this car somewhere on the outskirts of Syracuse, New York. Trooper Dillon testified at the time that he was ordered to stop this vehicle and arrest the occupants and he was warned of the possibility that they might be armed. Nothing of substantive content, other than the radio message itself, was added in the evidence at the trial toward the requisite probable cause which would support any belief that the occupants of this vehicle were involved in the robbery-burglary in Rome. The facts known to the arresting officer "at the time the arrest is made" are of prime importance in determining the legality of the arrest. Adams v. Williams, 407 U.S. 143, 148 (1972). Trooper Dillon is deceased. He was shot down last year when stopping an automobile on the highway for investigative

purposes in the performance of his duties. (See, Return by Respondent, State of New York, p. 2).

It is settled law that the evaluation of facts alleged to constitute probable cause must be objective no matter what good faith actions, subjective motives, or hunches inspired the arresting officer to act. United States v. McDowell, 475 F.2d 1037, 1039 (9th Cir. 1973); United States v. Martinez, 465 F. 2d 79 (2d Cir. 1972); Moss v. Cox, 311 F. Supp. 1245, 1251 (E.D.Va. 1970). These standards are at least as stringent as would apply to an arrest or search with a warrant. United States v. Guana-Sanchez, 484 F.2d 590 (7th Cir. 1973), pet. for cert. granted, 417 U.S. 967 (1974). The judgment on probable cause may include the collective knowledge and information uncovered by the police during the investigation, as argued by the district attorney here. See United States v. Canieso, 470 F.2d 1224, 1230 n.7 (2d Cir. 1972); United States v. Troutman, 458 F.2d 217, 220 (10th Cir. 1972); Smith v. United States, 358 F.2d 833 (D.C.Cir. 1966), cert. den., 384 U.S. 1008 (1967). When the accumulated facts, as appear in the record, are objectively evaluated, it is clear to my mind that probable cause for these arrests was lacking in the legal sense. Trooper Dillon had no personal knowledge of any crime nor evidently was he told of any in the radio communication. He did not have any independent basis to make the arrests, as for example, evidence of a crime in plain view; nor was there sufficient information relayed in the radio message to furnish adequate support to arrest. See United States v. Robinson, 414 U.S. 218 (1973); United States v. Cage, 494 F.2d 740 (2d Cir. 1974); United States v. Hernandez, 486 F.2d 614 (10th Cir. 1973)(per curiam), cert. den. 415 U.S. 959 (1974); United States ex rel. Johnson v. People of the State of Illinois, 469 F.2d 1297 (7th Cir. 1972), cert. den., 411 U.S. 920 (1973). Since the arrest can be considered as effected at the time Trooper Dillon approached the vehicle with his gun drawn [See United States v. Troutman, supra], it is unlikely that he could have seen any

evidence in plain view at that instant and none is revealed in the record. The district attorney correctly argues that a police officer ordinarily is entitled to act on the strength of a radio transmission originating at his headquarters or from another police agency [United States v. Simpson, 484 F.2d 467 (5th Cir. 1973) (per curiam); United States v. Impson, 482 F.2d 197 (5th Cir. 1973)(per curiam), cert. den., 414 U.S. 1009 (1973); United States v. Miles, 468 F.2d 482, 487-88 (3rd Cir. 1972); United States ex rel. Wilson v. LaVallee, 367 F.2d 351 (2d Cir. 1966); see People v. Lypka, ____ N.Y.2d _____ (February 20, 1975)], but a radio message without more does not obviate the need for probable cause on the part of the person who authorizes the arrest by means of that communication. Whiteley v. Warden, 401 U.S. 560 (1971).

Again speaking in terms of the information contained in the record of this trial, no indication of probable cause is evident on the part of Trooper Risley or any other officers. Trooper Risley simply recognized a license number. There is no evidence that he knew of the recent crimes in Rome, or that petitioner was a suspect in them, or, indeed, that petitioner was even in the vehicle. See United States v. Jennings, 468 F.2d 111 (9th Cir. 1972); United States v. Wixom, 460 F.2d 206 (8th Cir. 1972); see also, People v. McGroder, 26 A.D. 2d 615(4th Dept. 1966); compare, United States v. Boston, 508 F.2d 1171, 1174 (2d Cir. 1974).

The district attorney contends that "Trooper Risley and <u>other officers</u> ... had reasonable ground for believing that the occupants of that car had committed a felony * * *." (memorandum, filed February 13, 1975 at p. 7)(emphasis added). But nowhere in the record is it revealed who these "other officers" were and what they knew or communicated to those authorizing or conveying the message for arrest. The cases cited in support of respondent's position are distinguishable principally because they involved circumstances where the police already had a reliable identification to start with,

but here based upon the record this fact is not apparent.

Therefore, in my judgment, it must be ruled that the arrest of petitioner under the existing circumstances when made was without probable cause. Whiteley v. Warden, supra; see People v. Cantor, _____ N.Y.2d _____, _____, Slip Op. at 6 (February 18, 1975).

It is settled law that an illegal arrest without more, after the indictment and conviction of a defendant ordinarily is insufficient to sustain a federal writ of habeas corpus. United States ex rel. Burgett v. Wilkins, 283 F.2d 306 (2d Cir. 1968)(per curiam), cert. den., 393 U.S. 1050 (1969); cf. Frisbie v. Collins, 342 U.S. 519 (1952); see United States v. Turner, 442 F.2d 1146 (8th Cir. 1971); Moreland v. United States, 347 F.2d 376 (10th Cir. 1965); Dewease, Jr. v. Cox, 327 F. Supp. 652 (W.D.Va. 1971). Yet, the inquiry cannot end there because two questions remain which deal with the effect of the arrest on subsequent identifications and their effect on petitioner's trial and whether it comported with fundamental fairness under the Constitution.

The petitioner and the two other codefendants were made to stand in a line-up within hours of the crime and were there viewed by witnesses who later identified them in court. Photographs of these men were also shown to some witnesses. Judge John J. Walsh in a written decision upon the pre-trial motion of codefendant Rinaldi ordered a Wade hearing [see United States v. Wade, 388 U.S. 218 (1967)] to determine the legal validity of this line-up. (Decision by Walsh, J., September 13, 1968). Rinaldi was subsequently severed from the trial for medical reasons. (R. 254-261). At some time later, another motion for a pre-trial Wade hearing was made on behalf of the petitioner herein Pella, but this motion was denied subject to renewal at the time of trial. (Decision of Walsh, J., September 23, 1969). Judge Walsh found that the line-up was not unnecessarily suggestive and held further hearings on

petitioner's challenges, and those of codefendant Centollella. (R. 336-344, 420-450).

It is my judgment that while the line-up and any photographs taken of petitioner while in custody might reasonably be considered fruit of the tree poisoned by the illegal arrest [Wong Sun v. United States, 371 U.S. 471 (1963); Davis v. Mississippi, 394 U.S. 721 (1969); United States v. Edmons, 432 F.2d 577 (2d Cir. 1970); see Gissendanner v. Wainwright, 482 F.2d 1293 (5th Cir. 1973); Bynum v. United States, 262 F.2d 465 (D.C. Cir. 1958)], these procedures did not deny petitioner a fair trial. Neither the line-up identification or photographs were introduced as evidence during the trial by the prosecution and neither, in my judgment, tainted the separate in-court identifications by witnesses who did identify petitioner. Accordingly, it is not necessary to consider whether there was harmless error in this context. See United States ex rel. Vanterpool v. Cahn, 315 F. Supp. 986, 989 (E.D.N.Y. 1970); also, Chapman v. California, 386 U.S. 18 1967); Edwards v. Wainwright, 461 F.2d 238, 239 (5th Cir. 1972). Judge Walsh found the conduct of the line-up to be fundamentally fair and not to be unnecessarily suggestive. (R. 423, 445). Significantly, he also found that petitioner Pella was represented by counsel at the line-up and arraignment. (R. 445). Judge Walsh's findings are entitled to great weight on this application for a writ of habeas corpus by case law and statute. United States ex rel. Phipps v. Follette, 428 F.2d 912, 915-16 (2d Cir. 1970), cert. den., 400 U.S. 908 (1970); United States ex rel. Bates v. Mancusi, 360 F. Supp. 1340 (W.D.N.Y. 1973); 28 U.S.C. §2254(d).

The identifications made of petitioner at the time of the trial, I find were substantial, reliable and independent of the line-up involving Pella. Therefore, any illegality present in the unlawful arrest, and detention, or the line-up did not affect the trial identifications and thus deprive the petitioner of a

fair trial. Gilbert v. California, 388 U.S. 263 (1967).

An identification obtained as a result of the line-up and photographs does not prohibit the government from using identification testimony that is independent from that obtained or aided by these procedures. United States v. Wade, 388 U.S. 218 (1967); Clemons v. United States, 408 F.2d 1230 (D.C. Cir. 1968) (en banc), cert. den., 394 U.S. 964 (1969). It is shown, it is my belief, by a clear preponderance of the evidence contained in the trial transcript that the identification of petitioner at the trial was fully independent of any procedures associated with the illegal arrest, and of any impermissible or suggestive line-up procedures. United States v. Falley, 489 F.2d 33 (2d Cir. 1973); United States v. Clark, 294 F. Supp. 44, 51 (D.D.C. 1968), aff'd 408 F.2d 1230 (D.C. Cir. 1968), cert. den. 394 U.S. 964 (1969).

The Court of Appeals, Second Circuit, has summarized the test for determining whether an identification is independent of prior tainted procedures.

> The effort must be to determine whether before the imprint arising from the unlawful identification procedure, there was already such a definite image in the witness' mind that he is able to rely on it at trial without much, if any, assistance from its successor. * * * In making this subtle determination much will depend on the witness' initial opportunity for observation and also on whether he was motivated to make a careful observation of the perpetrator. United States ex rel. Phipps v. Follette, 428 F.2d 912, 915 (2d Cir. 1970), cert. den., 400 U.S. 908 (1970).

The factors which are to be examined to determine the independence of the identification are that:

(1) the witness was unequivocal in identification and his testimony is credible in terms of the opportunity he had for a good view of the defendant;

(2) the criminal's appearance made a lasting impression;

(3) the identification remained strong through all stages of the pre-trial and trial and the passage of time associated therewith;

(4) the testing of these factors is done by effective cross-examination during the in court identification; and

(5) additional witness identification or corroboration or corroborative evidence tending to support the independence of this identification is presented.

Neil v. Biggers, 409 U.S. 188, 200 (1972); Haberstroh v. Montanye, 493 F.2d 483 (2d Cir. 1974)(per curiam); Clemons v. United States, supra, 408 F. 2d at 1241.

Two witnesses identified petitioner Pella at the trial as one of those persons involved in the burglary-robbery in question. The primary witness was Mr. Thomas P. Rees, a general insurance broker, who testified he observed the petitioner running with his accomplices from a short distance and for a reasonable length of time necessary to obtain a good look. (R. 1149-1244). A carpenter working at a neighboring house, Mr. Thomas J. Alder, likewise testified he observed the petitioner and other men approaching the house of the victim, as well as observing them elsewhere in the neighborhood. (R. 410-420 and 450-514). A review of their testimony and a knowledge of other corroborative evidence, in my judgment, reveals no grounds to question the validity, strength or independence of these identifications.

Witness Rees saw petitioner and two others less than ten (10) feet away running towards him from a distance of seventy feet away (R. 1163) during which time these men paused for a time. (R. 1164). Rees also participated with other citizens in apprehending petitioner's accomplices a short time later. He positively identified petitioner Pella during the trial (R. 1161-1162, 1239, 1243) which was approximately eighteen months after this confrontation. This identification withstood hard and effective cross-examination. It is very significant as Rees described it in his testimony that he was uniquely motivated to retain a definite, lasting, and reliable image of petitioner due to the coincidental resemblance of petitioner and one of the codefendants with two of his friends,

(R. 1232-1234, 2227), as well as Rees' role as a citizen-pursuer of petitioner and his accomplices. United States ex rel. John v. Casscles, 489 F.2d 20 (2d Cir. 1973), cert. den., 416 U.S. 959 (1974); cf. Ward v. Wainwright, 450 F.2d 409 (5th Cir. 1971). He testified that he made the mental association of this resemblance upon seeing petitioner and the others running past him and was fully confident in his ability to identify petitioner (R. 1167, 1243) without resort to the line-up at all. (R. 2227). Furthermore, Rees testified that the photographs shown to him did not aid his identification of the petitioner. (R. 1174-1175, 1243 and 1249). See United States v. Counts, 471 F.2d 422, 425 (2d Cir. 1971), cert. den., 411 U.S. 935 (1973).

The testimony of w tness Alder, I find to be equally independent of the line-up and photographs. His testimony was subject to the same vigorous cross-examination and he also stated that the line-up provided no assistance to his identification, see United States v. Counts, supra, although he did admit he obtained assistance from viewing the photographs of petitioner. (R. 450, 470). The use of such photographs might be inadvisable in some circumstances, but certainly not prejudicial per se. United States v. Boston, supra. Realizing that there was substantial corroborative evidence supporting these identifications, I do not find that the photographs shown to witness Alder or to witness Rees presented any "substantial likelihood of irreparable misidentification" when viewed in the totality of circumstances of this case. Simmons v. United States, 390 U.S. 377, 384 (1968); Stovall v. Denno, 388 U.S. 293, 302 (1967); United States v. Tramunti, _____ F.2d _____, Slip Op. 2107, 2158-59 (2d Cir. March 7, 1975); Word v. Slayton, 337 F. Supp. 19, 22 (W.D.Va. 1972). I, therefore, find the use of photographs in this state prosecution caused no prejudice to petitioner at his trial that rises to the level of constitutional stature. Certainly no showing has been made of actual prejudice and denial of a fair trial in the consti-

tutional sense because of the line-up with counsel present or photographs that followed an arrest without probable cause. United States v. Boston, supra, 508 F.2d 1176-77; Carpenter v. United States, 463 F.2d 397 (10th Cir. 1972). Therefore, the identifications made, to my mind, were reliable and constitutionally acceptable. Neil v. Biggers, supra; Kirby v. Sturges, _____ F.2d _____, 16 Cr. Law Reporter 2431, 2432 (7th Cir. January 28, 1975); United States ex rel. Crispin v. Mancusi, 448 F.2d 233, 238 (2d Cir. 1971); cert. den., 404 U.S. 967 (1971); United States ex rel. Bates v. Mancusi, supra; Bowring v. Cox, 320 F. Supp. 688 (W.D.Va. 1970).

Finally, I find no merit to petitioner's claim that he was denied the right to cross-examine the victim, Mrs. Frances Cingranelli, who testified for the prosecution and was cross-examined by other defense counsel. This deprivation of opportunity to cross-examine was raised during the trial (R. 1974-1976), and an offer was made by the prosecution to produce her for cross-examination (R. 1990-1993), but the offer was not accepted definitely by petitioner's counsel. (R. 1992). The record discloses that at the next session of the trial, the prosecution actually produced Mrs. Cingranelli and again offered to allow counsel to cross-examine her. (R. 2000-2015). The offer was refused on the basis that the people had rested their case the previous day (R. 1966) and the defense case had already begun. It is very questionable from the record, in my view, whether the defense had begun since admittedly the defense counsel were not ready and did not go forward when the people rested and had, indeed, asked for a recess (R. 1972) until the next day at which time the prosecution tendered Mrs. Cingranelli in person. But even if it were not so, a decision to allow the prosecution to reopen its case or offer further proof rests within the discretion of the trial judge. United States v. Jones, 480 F.2d 1135

(2d Cir. 1973); United States v. Young, 488 F.2d 1211 (6th Cir. 1973). Moreover, issues such as this are not constitutional in scope and thus are not reviewable in a federal habeas corpus proceeding. United States v. Rundle, 422 F.2d 354 (3rd Cir. 1970); Rodella v. United States, 286 F.2d 306 (9th Cir. 1960), cert. den., 365 U.S. 889 (1961). Trial errors and defects are matters of state law and procedure that do not involve a constitutional issue unless they are so prejudicial as to deny a fair trial within the Due Process Clause. United States ex rel. Griffin v. Martin, 409 F.2d 1300 (2d Cir. 1969); United States ex rel. Green v. McMann, 268 F. Supp. 529 (S.D.N.Y. 1967); Shaefer v. Leone, 443 F.2d 182 (2d Cir. 1971), cert. den., 404 U.S. 939 (1971).

In conclusion, none of the issues presented here merit in my judgment the habeas corpus relief sought. Petitioner, from my appraisal of the trial record, received a fair trial and one which complied with all federal constitutional requirements. The petition for habeas corpus is hereby denied and dismissed.

It is so Ordered.

Dated: April 11, 1975

Albany, New York

James T. Foley

UNITED STATES DISTRICT JUDGE

APPLICATION FOR CERTIFICATE OF PROBABLE CAUSE WITH ATTORNEY'S AFFIDAVIT ATTACHED.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, ex rel.

JOHN J. PELLA,
Petitioner

against

THEODORE REID, SUPERINTENDENT OF ALBION CORRECTIONAL FACILITY,
Respondent

APPLICATION FOR CERTIFICATE OF PROBABLE CAUSE

The relator John J. Pella, hereby respectfully moves this Court, on the papers attached hereto, for a certificate of probable cause for an appeal to the Court of Appeals from the judgment and order of the Federal District Court for the Northern District of New York, entered on the 11th day of April, 1975.

Dated: May 9, 1975

Yours, etc.

ALI & GERBER
JON GERBER, ESQ.
Attorneys for Relator
920 University Building
Syracuse, New York 13202
(315) 472-4481

Application for Certificate of Probable Cause
with Attorney's Affidavit attached.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, ex rel.

JOHN J. PELLA,
Petitioner

ATTORNEY'S AFFIDAVIT

against

THEODORE REID, SUPERINTENDENT OF
ALBION CORRECTIONAL FACILITY,
Respondent

JON GERBER, being duly sworn, deposes and says:

1. He is an associate of Ali & Gerber the attorneys for the Petitioner, John J. Pella.

2. The Habeas Corpus Petition of John J. Pella was denied by the Honorable Judge James T. Foley on April 11, 1975.

3. The District Court Judge determined that although Petitioner was illegally arrested and although certain identification evidence was fruit of such arrest, that the identifications were nevertheless reliable, i.e. independent source for the identifications was found.

4. It is the Petitioner's contention that the illegal arrest was exploited by the police by means of a multiplicity of highly suggestive lineup procedures; that such procedures, and not the independent recollection of two bystanders were the basis for the in-court identifications of Petitioner.

5. According to the standards of independent source set forth by the Supreme Court, the identifications of Petitioner were dependent upon the tainted identification procedures.

6. Petitioner's contentions in this regard are substantial and merit more complete exploration in the Court of Appeals.

Jon Gerber

Sworn to before me
this 9th day of May 1975

Notary Public

DECISION AND ORDER OF DISTRICT COURT GRANTING CERTIFICATE OF PROBABLE CAUSE.

UNITED STATES DISTRICT [illegible]RT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, ex rel.
JOHN J. PELLA,

Petitioner,

74-CV-426

-against-

THEODORE REID, Superintendent of
Albion Correctional Facility,

Respondent.

APPEARANCES:

OF COUNSEL:
JON GERBER

ALI & GERBER
Attorneys for Petitioner
920 University Building
Syracuse, New York 13202

JAMES T. FOLEY, D. J.

MEMORANDUM-DECISION and ORDER

Through his attorneys who filed and briefed a petition of the petitioner, a State prisoner, for a federal writ of habeas corpus, there is filed an application for a certificate of probable cause directly with me in relation to my denial and dismissal by memorandum-decision and order dated April 11, 1975. The application states that the certificate is sought for an appeal to the United States Court of Appeals, Second Circuit, 28 U.S.C. 2253.

After review of my decision dated April 11, 1975, it is my judgment there is substance to several issues, and the certificate of probable cause hereby issues.

The application shall be filed with the Clerk.

It is so Ordered.

Dated: May 12, 1975
Albany, New York

James T. Foley

UNITED STATES DISTRICT JUDGE

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RE: UNITED STATES OF AMERICA, ex. rel. JOHN J. PELLA v.
THEODORE REID, SUPT. OF ALBION CORRECTIONAL FACILITY

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss.:
CITY OF SYRACUSE)

EVERETT J. REA , being duly sworn, deposes and says:

That he is associated with Spaulding Law Printing Company of Syracuse, New York, and is over twenty-one years of age.

That at the request of ALI & GERBER, Attorneys for Petitioner-Appellant, he personally served one (1) copy of the printed [Record] [Brief] [Appendix] of the above-entitled case addressed to:

Hon. Richard Enders
Oneida County District Attorney
Court House
Utica, N. Y. 13501 ATT: Daniel Wilson, Esq.

Hon. Louis J. Lefkowitz
Attorney General of the State of N.Y.
Dept. of Law
The Capitol
Albany, N. Y. 12224 ATT: Joseph R. Castellani, Esq.

by depositing true copies of the same securely wrapped in a postpaid wrapper in a Post Office maintained by the United States Government in the City of Syracuse, New York on July 30, 1975.

Everett J. Rea

Everett J. Rea

Sworn to before me this 30th
day of July , 1975.

Ruth A. McLoughney
Commissioner of Deeds

cc: Ali & Gerber

AFFILIATED WITH
DAILY RECORD CORP.
ROCHESTER, N. Y.